

EN BANC

[A.M. NO. CA-05-18-P [FORMERLY OCA I.P.I. NO. 05-80-CA-P], April 12, 2005]

**ZALDY NUEZ, COMPLAINANT, VS. ELVIRA CRUZ-APAO,
RESPONDENT.**

D E C I S I O N

PER CURIAM:

What brings our judicial system into disrepute are often the actuations of a few erring court personnel peddling influence to party-litigants, creating the impression that decisions can be bought and sold, ultimately resulting in the disillusionment of the public. This Court has never wavered in its vigilance in eradicating the so-called "bad eggs" in the judiciary. And whenever warranted by the gravity of the offense, the supreme penalty of dismissal in an administrative case is meted to erring personnel.^[1]

The above pronouncement of this Court in the case of *Mendoza vs. Tiongson*^[2] is applicable to the case at bar.

This is an administrative case for Dishonesty and Grave Misconduct^[3] against Elvira Cruz-Apao (Respondent), Executive Assistant II of the Acting Division Clerk of Court of the Fifteenth (15th) Division, Court of Appeals (CA). The complaint arose out of respondent's solicitation of One Million Pesos (P1,000,000.00) from Zaldy Nuez (Complainant) in exchange for a speedy and favorable decision of the latter's pending case in the CA,^[4] more particularly, CA-G.R. SP No. 73460 entitled "*PAGCOR vs. Zaldy Nuez*."^[5] Complainant initially lodged a complaint with the Action Center of the Television program *Imbestigador* of GMA Network,^[6] the crew of which had accompanied him to the Presidential Anti-Organized Crime Commission "Special Projects Group (PAOCC-SPG) in Malacañang where he filed a complaint for extortion^[7] against respondent. This led to the conduct of an entrapment operation by elements of the Presidential Anti-Organized Crime Task Force (PAOCTF) on 28 September 2004 at the Jollibee Restaurant, 2nd Floor, Times Plaza Bldg., corner Taft and United Nations Avenue, Manila,^[8] the place where the supposed hand-over of the money was going to take place.

Respondent's apprehension by agents of the PAOCTF in the course of the entrapment operation prompted then CA Presiding Justice (PJ) Cancio C. Garcia (now Supreme Court Justice) to issue Office Order No. 297-04-CG^[9] (Order) which created an *ad-hoc* investigating committee (Committee).^[10] The Committee was specifically tasked among others to conduct a thorough and exhaustive investigation of respondent's case and to recommend the proper administrative sanctions against her as the evidence may warrant.^[11]

In accordance with the mandate of the *Order*, the Committee conducted an investigation of the case and issued a *Resolution*^[12] dated 18 October 2004 where it concluded that a prima facie case of Dishonesty and Serious Misconduct against respondent existed. The Committee thus recommended respondent's preventive suspension for ninety (90) days pending formal investigation of the charges against her.^[13] On 28 January 2005, the Committee submitted a *Report*^[14] to the new CA Presiding Justice Romeo A. Brawner with its recommendation that respondent be dismissed from service.

Based on the hearings conducted and the evidence received by the Committee, the antecedent facts are as follows:

Complainant's case referred to above had been pending with the CA for more than two years.^[15] Complainant filed an illegal dismissal case against PAGCOR before the Civil Service Commission (CSC). The CSC ordered complainant's reinstatement but a writ of preliminary injunction and a temporary restraining order was issued by the CA in favor of PAGCOR, thus complainant was not reinstated to his former job pending adjudication of the case.^[16] Desiring an expeditious decision of his case, complainant sought the assistance of respondent sometime in July 2004 after learning of the latter's employment with the CA from her sister, Magdalena David. During their first telephone conversation^[17] and thereafter through a series of messages they exchanged via SMS,^[18] complainant informed respondent of the particulars of his pending case. Allegedly, complainant thought that respondent would be able to advise him on how to achieve an early resolution of his case.

However, a week after their first telephone conversation, respondent allegedly told complainant that a favorable and speedy decision of his case was attainable but the person who was to draft the decision was in return asking for One Million Pesos (P1,000,000.00).^[19]

Complainant expostulated that he did not have that kind of money since he had been jobless for a long time, to which respondent replied, "*Eh, ganoon talaga ang lakaran dito, eh. Kung wala kang pera, pasensiya na.*"^[20] Complainant then tried to ask for a reduction of the amount but respondent held firm asserting that the price had been set, not by her but by the person who was going to make the decision.^[21] Respondent even admonished complainant with the words "*Wala tayo sa palengke iho!*"^[22] when the latter bargained for a lower amount.^[23]

Complainant then asked for time to determine whether or not to pay the money in exchange for the decision. Instead, in August of 2004, he sought the assistance of *Imbestigador*.^[24] The crew of the TV program accompanied him to PAOCCF-SPG where he lodged a complaint against respondent for extortion.^[25] Thereafter, he communicated with respondent again to verify if the latter was still asking for the money^[26] and to set up a meeting with her.^[27] Upon learning that respondent's offer of a favorable decision in exchange for One Million Pesos (P1,000,000.00) was still standing, the plan for the entrapment operation was formulated by *Imbestigador* in cooperation with the PAOCC.

On 24 September 2004, complainant and respondent met for the first time in person at the 2nd Floor of Jollibee, Times Plaza Bldg.,^[28] the place where the entrapment operation was later conducted. Patricia Siringan (Siringan), a researcher of *Imbestigador*, accompanied complainant and posed as his sister-in-law.^[29] During the meeting, complainant clarified from respondent that if he gave the amount of One Million Pesos (P1,000,000.00), he would get a favorable decision. This was confirmed by the latter together with the assurance that it would take about a month for the decision to come out.^[30] Respondent also explained that the amount of One Million Pesos (P1,000,000.00) guaranteed a favorable decision only in the CA but did not extend to the Supreme Court should the case be appealed later.^[31]

When respondent was asked where the money will go, she claimed that it will go to a male researcher whose name she refused to divulge. The researcher was allegedly a lawyer in the CA Fifth (5th) Division where complainant case was pending.^[32] She also claimed that she will not get any part of the money unless the researcher decides to give her some.^[33]

Complainant tried once again to bargain for a lower amount during the meeting but respondent asserted that the amount was fixed. She even explained that this was their second transaction and the reason why the amount was closed at One Million Pesos (P1,000,000.00) was because on a previous occasion, only Eight Hundred Thousand Pesos (P800,000.00) was paid by the client despite the fact that the amount had been pegged at One Million Three Hundred Thousand Pesos (P1,300,000.00).^[34] Complainant then proposed that he pay a down payment of Seven Hundred Thousand Pesos (P700,000.00) while the balance of Three Hundred Thousand Pesos (P300,000.00) will be paid once the decision had been released.^[35] However, respondent refused to entertain the offer, she and the researcher having learned their lesson from their previous experience for as then, the client no longer paid the balance of Five Hundred Thousand Pesos (P500,000.00) after the decision had come out.^[36]

Complainant brought along copies of the documents pertinent to his case during the first meeting. After reading through them, respondent allegedly uttered, "*Ah, panalo ka.*"^[37] The parties set the next meeting date at lunchtime on 28 September 2004 and it was understood that the money would be handed over by complainant to respondent then.^[38]

On the pre-arranged meeting date, five (5) PAOCTF agents, namely: Capt. Reynaldo Maclang (Maclang) as team leader, SPO1 Renato Banay (Banay), PO1 Bernard Villena (Villena), PO1 Danny Feliciano, and PO2 Edgar delos Reyes^[39] arrived at around 11:30 in the morning at Jollibee.^[40] Nuez and Siringan arrived at past noon and seated themselves at the table beside the one occupied by the two (2) agents, Banay and Villena. Complainant had with him an unsealed long brown envelope containing ten (10) bundles of marked money and paper money which was to be given to respondent.^[41] The envelope did not actually contain the One Million Pesos (P1,000,000.00) demanded by respondent, but instead contained paper money in denominations of One Hundred Pesos (P100.00), Five Hundred Pesos (P500.00) and One Thousand Pesos (P1,000.00), as well as newspaper cut-outs.^[42] There were also ten (10) authentic One Hundred Peso (P100.00) bills which had been previously

dusted with ultra-violet powder by the PAOCTF.^[43] The three other PAOCTF agents were seated a few tables away^[44] and there were also three (3) crew members from *Imbestigador* at another table operating a mini DV camera that was secretly recording the whole transaction.^[45]

Respondent arrived at around 1:00 p.m.^[46] She appeared very nervous and suspicious during the meeting.^[47] Ironically, she repeatedly said that complainant might entrap her, precisely like those that were shown on *Imbestigador*.^[48] She thus refused to receive the money then and there. What she proposed was for complainant and Siringan to travel with her in a taxi and drop her off at the CA where she would receive the money.^[49]

More irony ensued. Respondent actually said that she felt there were policemen around and she was afraid that once she took hold of the envelope complainant proffered, she would suddenly be arrested and handcuffed.^[50] At one point, she even said, "*Ayan o, tapos na silang kumain, bakit hindi pa sila umaalis?*"^[51] referring to Banay and Villena at the next table. To allay respondent's suspicion, the two agents stood up after a few minutes and went near the staircase where they could still see what was going on.^[52]

Complainant, respondent and Siringan negotiated for almost one hour.^[53] Complainant and Siringan bargained for a lower price but respondent refused to accede. When respondent finally touched the unsealed envelope to look at the money inside, the PAOCTF agents converged on her and invited her to the Western Police District (WPD) Headquarters at United Nations Avenue for questioning.^[54] Respondent became hysterical as a commotion ensued inside the restaurant.^[55]

On the way to the WPD on board the PAOCTF vehicle, Banay asked respondent why she went to the restaurant. The latter replied that she went there to get the One Million Pesos (P1,000,000.00).^[56]

Respondent was brought to the PNP Crime Laboratory at the WPD where she was tested and found positive for ultra-violet powder that was previously dusted on the money.^[57] She was later detained at the WPD Headquarters.

At seven o'clock in the evening of 28 September 2004, respondent called Atty. Lilia Mercedes Encarnacion Gepty (Atty. Gepty), her immediate superior in the CA at the latter's house.^[58] She tearfully confessed to Atty. Gepty that "she asked for money for a case and was entrapped by police officers and the media."^[59] Enraged at the news, Atty. Gepty asked why she had done such a thing to which respondent replied, "*Wala lang ma'am, sinubukan ko lang baka makalusot.*"^[60] Respondent claimed that she was ashamed of what she did and repented the same. She also asked for Atty. Gepty's forgiveness and help. The latter instead reminded respondent of the instances when she and her co-employees at the CA were exhorted during office meetings never to commit such offenses.^[61]

Atty. Gepty rendered a verbal report^[62] of her conversation with their division's chairman, Justice Martin S. Villarama. She reduced the report into writing and

submitted the same to then PJ Cancio Garcia on 29 September 2004.^[63] She also later testified as to the contents of her report to the Committee.

During the hearing of this case, respondent maintained that what happened was a case of instigation and not an entrapment. She asserted that the offer of money in exchange for a favorable decision came not from her but from complainant. To support her contention, she presented witnesses who testified that it was complainant who allegedly offered money to anyone who could help him with his pending case. She likewise claimed that she never touched the money on 28 September 2004, rather it was Capt. Maclang who forcibly held her hands and pressed it to the envelope containing the money. She thus asked that the administrative case against her be dismissed.

This Court is not persuaded by respondent's version. Based on the evidence on record, what happened was a clear case of entrapment, and not instigation as respondent would like to claim.

In entrapment, ways and means are resorted to for the purpose of ensnaring and capturing the law-breakers in the execution of their criminal plan. On the other hand, in instigation, the instigator practically induces the would-be defendant into the commission of the offense, and he himself becomes a co-principal.^[64]

In this case, complainant and the law enforcers resorted to entrapment precisely because respondent demanded the amount of One Million Pesos (P1,000,000.00) from complainant in exchange for a favorable decision of the latter's pending case. Complainant's narration of the incidents which led to the entrapment operation are more in accord with the circumstances that actually transpired and are more credible than respondent's version.

Complainant was able to prove by his testimony in conjunction with the text messages from respondent duly presented before the Committee that the latter asked for One Million Pesos (P1,000,000.00) in exchange for a favorable decision of the former's pending case with the CA. The text messages were properly admitted by the Committee since the same are now covered by Section 1(k), Rule 2 of the Rules on Electronic Evidence^[65] which provides:

"Ephemeral electronic communication" refers to telephone conversations, text messages . . . and other electronic forms of communication the evidence of which is not recorded or retained."

Under Section 2, Rule 11 of the Rules on Electronic Evidence, "Ephemeral electronic communications shall be proven by the testimony of a person who was a party to the same or who has personal knowledge thereof" In this case, complainant who was the recipient of said messages and therefore had personal knowledge thereof testified on their contents and import. Respondent herself admitted that the cellphone number reflected in complainant's cellphone from which the messages originated was hers.^[66] Moreover, any doubt respondent may have had as to the admissibility of the text messages had been laid to rest when she and her counsel signed and attested to the veracity of the text messages between her and complainant.^[67] It is also well to remember that in administrative cases, technical rules of procedure and evidence are not strictly applied.^[68] We have no doubt as to